WEBA000 45

PENGUIN BOOKS

VIKING PENGUIN INC.
625 MADISON AVENUE
NEW YORK, N.Y. 10022
(212) 755-4330 CABLE: VIKPRESS

October 20, 1977

Mr. Stewart Brand
CoEvolution Quarterly
P. O. Box 428
Sausalito, California 94965

Dear Stewart:

Enclosed please find a copy of the Point Contract plus one check. We have initialed your changes and would like to add that the amount of the first payment specified in paragraph 2.4 should read $8,333.33.

With best wishes.

Sincerely,

Allan Lang
Managing Director
Penguin Books

AL/ls
enclosure

AGREEMENT

THIS AGREEMENT is entered into this 20th day of October, 1977, by and between POINT, a California non-profit corporation ("POINT" herein), and VIKING PENGUIN, INC., a corporation ("PENGUIN" herein).

R E C I T A L S

1. POINT is about to publish three books: Space Colonies, Soft-Tech, and Watersheds (such books being sometimes hereinafter referred to collectively as "the Books");

2. POINT desires to sell the Books to PENGUIN and have PENGUIN distribute and sell the Books to the public, and PENGUIN desires to perform such services;

NOW, THEREFORE, the parties hereto agree as follows:

I. TERMS OF DISTRIBUTORSHIP

Section 1.1. Except as set forth in Section 1.2 below, PENGUIN shall have the exclusive right to distribute and sell the English language version of the Books throughout the world.

Section 1.2. POINT reserves the right to distribute and sell copies of the Books by mail to subscribers of its magazine, CoEvolution Quarterly.

Section 1.3. PENGUIN shall also have the following exclusive rights with respect to which it alone may make arrangements with third parties in connection with the Books:

(a) Book club publication;

(b) Publication in foreign languages; and

(c) Reproduction of the Books, or any of them, without charge, in Braille or other forms for use by the physically handicapped.

Section 1.4. The proceeds from the disposition of its sale of the rights described in Sections 1.3(a) and 1.3(b) above shall be shared equally by the parties. PENGUIN shall pay POINT's share of such proceeds to POINT within sixty (60) days after PENGUIN's receipt thereof. ~~In the event remittance is not made within such sixty (60) days, interest shall accrue upon the amount due POINT at the rate of ten percent (10%) per annum.~~

Section 1.5. POINT hereby specifically reserves all other rights to the Books, including, but not limited to: movies; television; radio; reprinting of the Books, or any of them, or any part or adaptation thereof, in volume form, anthologies, magazines, newspapers or other publications; and reproduction or storage for reproduction of the text and/or illustrations of any of the Books, or any part thereof, in audio and/or visual form.

II. PURCHASE PRICE OF THE BOOKS

Section 2.1. PENGUIN shall purchase from POINT a minimum of twenty thousand (20,000) copies of each Book at a cost of twenty-five percent (25%) of the cover price of each Book, F.O.B. Waller Press, San Francisco, California. The cover price for each Book shall be determined as set forth in Section 4.3 below.

Section 2.2. PENGUIN shall make the payments required pursuant to Section 2.1 to POINT on the following terms:

(a) One-third (1/3) thereof shall be paid not less than sixty (60) days prior to the delivery date of the requisite number of copies of the Book to PENGUIN, the delivery date to be determined in accordance with Section 3.2 below.

(b) One-third (1/3) thereof shall be paid upon delivery of the requisite number of copies of the Book to PENGUIN's warehouse in East Rutherford, New Jersey.

(c) The remaining one-third (1/3) thereof shall be paid not later than sixty (60) days after the publication of the Book in question. Publication of the Book shall be determined in accordance with Section 5.1 below. In the event that PENGUIN has purchased the initial twenty thousand (20,000) copies of a Book and is purchasing additional copies of such Book, then the payment due under this sub-paragraph (c) shall be made within sixty (60) days after

delivery of such additional copies to PENGUIN's warehouse in East Rutherford, New Jersey.

Section 2.3. ~~In the event PENGUIN does not make the payments required under Section 2.2 above to POINT within the time specified, interest shall accrue upon the amount due at the rate of ten percent (10%) per annum.~~ In the event PENGUIN fails to make such payments within ten (10) days of the due date, such failure to pay shall constitute a default by PENGUIN, and POINT shall have the option to terminate this Agreement upon thirty (30) days' written notice to PENGUIN. Such termination shall only affect the future deliveries of the Books to PENGUIN by POINT and shall not affect the rights or obligations of either party with regard to any of the Books already delivered by POINT to PENGUIN hereunder.

Section 2.4. The parties herewith acknowledge that the initial one-third (1/3) payment for Space Colonies is due POINT, and such payment in the sum of Eight Thousand One Hundred Thirty-Three and 33/100 Dollars ($8,133.33) is herewith made by PENGUIN to POINT, receipt of which is hereby acknowledged by POINT.

Section 2.5. PENGUIN may purchase additional copies of each Book from POINT upon the terms set forth herein; provided, however, that such purchases shall be in minimum amounts which are commercially reasonable for POINT to have printed.

Section 2.6. POINT shall furnish to PENGUIN at POINT's sole expense two hundred fifty (250) copies of each Book for review purposes.

III. OTHER TERMS CONCERNING THE BOOKS

Section 3.1. The cover design, imprint, front matter, and other specifications of each Book shall be subject to mutual agreement of the parties hereto.

Section 3.2. It is understood that much of the material that will appear in the Books has previously been published by POINT in its magazine, CoEvolution Quarterly. Further, POINT reserves the right to publish other excerpts from the Books in said magazine; provided, however, that POINT shall take no action which would directly compete with PENGUIN's distribution of the Books.

IV. RIGHTS AND DUTIES OF POINT

Section 4.1. POINT is solely responsible for the preparation and production of each of the Books. It is the owner and publisher of the Books and shall retain all rights therein except as set forth in this Agreement.

Section 4.2. POINT shall determine the delivery date of each of the Books, subject, however, to PENGUIN's approval of such date, which approval shall not be unreasonably withheld. It is herewith agreed that the delivery date of Space Colonies shall be October 20, 1977. POINT shall notify PENGUIN of a delivery date at least ninety (90) days prior to such delivery date.

Section 4.3. The cover (suggested retail) price for Watersheds shall be determined by mutual agreement. The cover (suggested retail) price for Space Colonies and Soft-Tech shall be Five Dollars ($5.00) per copy.

Section 4.4. POINT hereby represents and warrants to PENGUIN (i) that it is the sole proprietor of each of the Books; (ii) that it has the sole power to make this Agreement; (iii) that the Books in no way infringe upon any copyright or proprietary right of others; and (iv) that such Books contain nothing unlawful, libelous or in violation of the rights of privacy of any person. POINT agrees to indemnify and hold harmless PENGUIN against all liabilities, losses, damages and expenses of any kind whatsoever resulting from any claim, action or proceeding, whether or not based upon a warranty, indemnity or undertaking of PENGUIN (asserted or instituted on the grounds that the Books violate any copyright or proprietary right, or contain anything unlawful, libelous or in violation of any right of privacy).

Section 4.5. POINT shall prosecute and defend any claims against any of the Books or which it may have for the infringement of a copyright of any of the Books by others. If, however, a claim is asserted against PENGUIN on the basis that any of the Books infringes upon the copyright or proprietary rights of others, or that any of the Books contains unlawful or libelous matter or is in violation of the rights of privacy of any person, then PENGUIN shall first tender the defense of such claim to POINT. In the event that POINT, within fifteen (15) days after the receipt of written notification by PENGUIN of such claim, does not choose to defend such claim by counsel of its own choice, then PENGUIN may defend such claim by counsel of its own choice at POINT's expense.

Section 4.6. POINT shall add to its copyright notice of each of the books the following: "Distributed by PENGUIN BOOKS, a division of VIKING PENGUIN, INC."

Section 4.7. In the event that POINT fails to deliver the requisite number of copies of any Book to PENGUIN at its warehouse in East Rutherford, New Jersey, within thirty (30) days of the delivery date of such Book as determined pursuant to Section 4.2 above, for any reason other than war, labor disputes, fire, unusual delay in transportation, unavoidable events, acts of God, or other causes beyond POINT's control, PENGUIN shall have the option to terminate

this Agreement and recover from POINT any and all amounts paid with respect to copies of the Book which have not been timely delivered.

Section 4.8. POINT shall have the option to repurchase from PENGUIN, at PENGUIN's cost for such Books plus the shipping costs from East Rutherford, New Jersey, to such place as may be designated by POINT, copies of the Books sufficient for POINT to fill orders received from its subscribers for the Books pursuant to Section 1.2 above. It is understood in this regard that POINT may sell copies of the Books to its subscribers at a reduced rate or as part of a package with a subscription to its magazine, CoEvolution Quarterly. (Continued on Page 12.)

V. RIGHTS AND DUTIES OF PENGUIN

Section 5.1. The publication date of each Book shall be determined by PENGUIN.

Section 5.2. PENGUIN shall bear the risk of loss of any and all Books it purchases from POINT, pursuant to this Agreement from and after the time such Books are delivered to it, F.O.B. Waller Press, San Francisco, California.

Section 5.3. PENGUIN shall use its best effort to sell rights to the Books, or any of them, on such terms as are customary in the trade, to book clubs. PENGUIN is hereby

authorized to execute licenses with one or more such book clubs and to receive on POINT's behalf all sums due and to become due under such book club licensing agreements. The rights of any such book club (and the right of PENGUIN to receive its share of the proceeds hereunder) shall survive the termination of this Agreement for the initial term of any such license with a book club.

Section 5.4. PENGUIN shall use its best efforts, and is hereby authorized, to sell rights to publish the Books, or any of them, in all countries of the world, other than the English-speaking countries, on such terms as are customary in the trade. PENGUIN is hereby authorized to execute agreements with one or more third parties with regard to such foreign publication rights and to receive on POINT's behalf all sums due and to become due under such agreements. The rights of any such third party (and the right of PENGUIN to receive its share of the proceeds from such agreements) shall survive the termination of this Agreement for the initial term of any agreement with regard to foreign publication rights with a third party.

Section 5.5. PENGUIN shall render to POINT periodic reports of all receipts from both book club contracts and foreign publication rights.

Section 5.6. The reports required under Section 5.5 above shall be subject to audit by POINT or its duly authorized representative. PENGUIN shall cooperate fully with

such audits; provided, however, that PENGUIN shall be given at least ten (10) days' written notice of each such audit and that there shall be no more than one audit in any calendar year. The cost of any audit shall be paid by POINT unless such audit shows an error in the amount due POINT in excess of Five Hundred Dollars ($500.00), in which event PENGUIN shall pay the reasonable expenses of such audit.

VI. MISCELLANEOUS

Section 6.1. Each party agrees that neither it nor any of its agents or employees shall, under any circumstances, be deemed to be agents or representatives of the other party for any purpose whatsoever, except as specifically set forth in this Agreement, and that it shall not have the right to enter into any contract or make any commitments in the name of or in behalf of the other party or to bind the other party in any respect whatsoever, except as specifically set forth herein.

Section 6.2. All notices required or permitted to be given under this Agreement by one of the parties to the other shall be given by delivery in person, by first-class mail, postage prepaid, or by telegram addressed to the principal office of the party as set forth below:

POINT: P.O. Box 428
Sausalito, CA 94965

Section 6.3. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 6.4. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede any and all prior understandings, arrangements, promises, contracts, and agreements of any form or nature whatsoever, whether oral or in writing. No modification, alteration, addition or change in the terms hereof shall be binding on either party hereto unless reduced to writing and executed by the duly authorized representatives of each party.

Section 6.5. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in San Francisco, California, in accordance with the rules then obtaining of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

Section 6.6. In the event that either party hereto brings an arbitration proceeding or legal action to enforce any of the provisions of this Agreement, the party which does not prevail in such action agrees to pay the other party hereto the prevailing party's reasonable attorneys', accountants', and experts' fees and the costs of such action.

Section 6.7. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, provided that no party hereto may assign this Agreement, or any part thereof, without the prior written consent of the other party, and any purported assignment without such prior written consent is void.

Section 6.8. (see below)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, in duplicate, the day and year first above written.

POINT

By _____

VIKING PENGUIN, INC.

By _____
Allan Lang
Managing Director
Penguin Books

Section 4. 8, continued

~~Should PENGUIN after two years from the publication date of any selected book give notice to POINT of PENGUIN's desire and intention to discontinue distribution and sale of such book, POINT shall repurchase from PENGUIN at original purchase price any unsold copies in mint condition.~~

Section 6.8. PENGUIN shall have an option on three (3) additional books to be selected by mutual agreement, on terms and conditions to be agreed upon, said option shall be exercised within 90 days after delivery of the last of the three (3) books specified in Section 1. of this agreement.